

REMARKS

Claims 1, 2 and 4-11 are pending. Claims 1 and 2 are allowed. Claim 4 is amended as to refer to sequences having 90 percent homology to the recited nucleic acid sequence. Support for the amendment to claim 4 can be found in the instant specification at page 27 line 23 through page 28 line 2, which states:

Two DNA or polypeptide sequences are “substantially homologous” when at least about 80% (preferably at least about 90%, and most preferably at least about 95%) of the nucleotides or amino acids match over a defined length of the molecule. As used herein, “substantially homologous” also refers to sequences showing identity to the specified DNA or polypeptide sequence. DNA sequences that are substantially homologous can be identified in a Southern hybridization under, for example, stringent conditions . . .

Thus, claim 4 as previously presented referred to nucleic acid molecules identifiable by stringent hybridization. The cited text in the specification indicates that such molecules may contain at least about 90 percent matching nucleotides, a limitation that has been introduced, by amendment, into claim 4. Accordingly, this amendment does not constitute new matter.

Claims 4-11 are rejected under the written description requirement of 35 U.S.C. §112. For reasons set forth below, the claims, particularly as amended herein, comply with the statute, so that the rejection should be withdrawn and all pending claims should be allowed to issue.

The Claims Comply With The Written Description Requirement

Claims 4-11 are rejected under 35 U.S.C. §112, first paragraph. The Examiner contends that previously presented claim 4, in reciting “stringent hybridization conditions”, does not satisfy the written description requirement because, according to the Examiner:

Claim 4 encompasses a large genus of nucleic acids of different size which share certain sequence homology with SEQ ID NO:1. Although the specification defines a functional equivalent of Mda-5 as a protein [that] retains substantially the same biological functions as Mda-5, the specification fails to disclose the structural requirements (for example, functional domain) of such functional equivalents for its biological activity. In addition, the specification also fails to describe what common structure such functional equivalents must share for their growth suppressive activity.

In order to advance the prosecution of this application, Applicants have amended claim 4 to require that at least 90 percent of the nucleotides of the claimed isolated nucleic acid molecules match the nucleotides of SEQ ID NO:1. This amendment is believed to obviate the basis for the pending rejection. Accordingly, it is requested that the rejection of claim 4 and dependent claims 5-11 be removed

CONCLUSION

Based on the foregoing remarks and in light of the amendment to claim 4, Applicants submit that the present application is in condition for allowance. A Notice of Allowance is therefore respectfully requested.

Applicants do not believe that any additional fee is required in connection with the submission of this document. However, should any fee be required, the Commissioner is hereby authorized to charge any fees to Deposit Account 02-4377. A copy of this sheet is enclosed.

Respectfully submitted,

BAKER BOTTS L.L.P.

A handwritten signature in black ink, appearing to read 'Lisa B. Kole', written over a horizontal line.

Lisa B. Kole
Patent Office Reg. No. 35,225

Attorney for Applicants

30 Rockefeller Plaza
New York NY 10112-4498

(212) 408-2628